

7969-0046/dmf

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

LAWRENCE BURLEY and FRANKLYN JACKSON,

Plaintiffs,

-against-

CITY OF NEWBURGH, POLICE OFFICER ROBERT
VASTA, POLICE OFFICER NICHOLAS CARDINALE, and
UNKNOWN POLICE OFFICERS 1-5,

Defendants.

-----X

ANSWER

07 CV 3336 (SCR)

**JURY TRIAL
DEMANDED**

The defendants, by their attorneys, McCabe & Mack LLP, as and for their answer to the complaint of the plaintiffs, respectfully show to the court and allege as follows.

INTRODUCTORY STATEMENT

1. With regard to paragraph numbered "1" of the complaint, neither admit nor deny as states conclusions of law and does not contain factual allegations.

JURISDICTION

2. With regard to paragraph numbered "2" of the complaint, neither admit nor deny as states conclusions of law.

PARTIES

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "3" of the complaint.

4. With regard to paragraph numbered "4" of the complaint, admit only with respect to Vasta and Cardinale.

5. With regard to paragraph numbered "5" of the complaint, admit only that the police officers are employed by the City and were in the course of their employment.

7969-0046/dmf

6. With regard to paragraph numbered “6” of the complaint, admit only that the City is the employer of the police officers and neither admit nor deny the remaining allegations as state conclusions of law.

COMMON FACTUAL ALLEGATIONS

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered “8” and “9” of the complaint.

FACTUAL ALLEGATIONS FOR LAWRENCE BURLEY’S CAUSES OF ACTION

8. Deny those allegations contained in paragraphs numbered “10”, “13”, “14” and “19” of the complaint.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered “11”, “12” and “15” of the complaint.

10. With regard to paragraph numbered “16” of the complaint, admit Vasta called for assistance and plaintiff was taken into custody. Deny all allegations that excessive force was used.

11. With regard to paragraph numbered “17” of the complaint, admit only that plaintiff was charged with obstructing governmental administration and resisting arrest and given an appearance ticket.

12. With regard to paragraph numbered “18” of the complaint, admit only that plaintiff was acquitted.

FACTUAL ALLEGATIONS FOR FRANKLYN JACKSON

13. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered “1” through “9” and incorporated by reference in paragraph “20” of the complaint as if the same were more fully set forth herein at length.

14. Deny knowledge or information sufficient to form a belief as to the truth of the

7969-0046/dmf

allegations contained in paragraphs numbered “21” and “24” of the complaint.

15. Deny those allegations contained in paragraphs numbered “22” and “27” of the complaint.

16. With regard to paragraph numbered “23” of the complaint, admit only that plaintiff was arrested and deny all allegations of excessive force.

17. With regard to paragraph numbered “25” of the complaint, admit that plaintiff was charged with disorderly conduct and released on his own recognizance.

18. With regard to paragraph numbered “26” of the complaint, admit only that defendant was acquitted.

FEDERAL CAUSES OF ACTION

19. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered “1” through “27” and incorporated by reference in paragraph “28” of the complaint as if the same were more fully set forth herein at length.

20. Deny those allegations contained in paragraphs numbered “29” of the complaint.

MUNICIPAL LIABILITY PURSUANT TO 42 U.S.C. §1983

21. Deny those allegations contained in paragraphs numbered “30”, “31” and “32” of the complaint.

ATTORNEY’S FEES

22. Deny those allegations contained in paragraphs numbered “33” of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

23. Robert Vasta and Nicholas Cardinale acted in good faith and are entitled to qualified immunity.

7969-0046/dmf

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

24. All force used was reasonable and necessary.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

25. Probable cause existed for each plaintiffs' arrest.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

26. Defendants acted in good faith and without malice.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

27. Plaintiffs' municipal liability cause of action fails to state a claim insofar as it is based upon vicarious liability.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

28. Insofar as plaintiffs allege claims under state law they are barred as they did not comply with General Municipal Law §50-e *et. seq.*

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

29. Plaintiffs' state law claims are barred by the statute of limitations.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

30. Punitive damages are not recoverable against a municipality.

AS AND FOR AN NINTH AFFIRMATIVE DEFENSE

31. The complaint fails to state a claim against the City of Newburgh.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

32. The Court lacks personal jurisdiction over the individual defendants by reason of a failure to service of process.

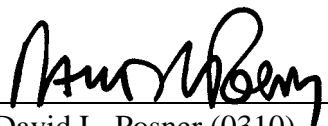
7969-0046/dmf

WHEREFORE, the defendants, demands judgment dismissing the complaint of the plaintiff herein, plus the costs and disbursements of this action and for such other and further relief as to the Court may seem just and proper.

DATED: Poughkeepsie, New York
August 9, 2007

Yours, etc.

McCABE & MACK LLP

By: 
David L. Posner (0310)

Attorneys for Defendants
63 Washington Street
P.O. Box 509
Poughkeepsie, NY 12602-0509
Tel: (845) 486-6800

TO: COBB & COBB
Attorneys for Plaintiffs
724 Broadway
Newburgh, NY 12550